

Use this Agreement (#4) for:
All NEW Design, Bridge Inspection, and Environmental OPS' Awarded on or after April 29, 2014; and
for any Construction Supervision OPS' whose Design OPS used Agreement #2 (OPPI Language)

REMOVE ALL TEXT IN BLUE BEFORE FINALIZING DOCUMENT

APPROVED COMMISSION MEETING

March 25, 2014

ORDER FOR PROFESSIONAL SERVICES NO. A/P/T1234

Title

THIS ORDER FOR PROFESSIONAL SERVICES, dated and effective _____ (the "Effective Date"), by and between the New Jersey Turnpike Authority, a body corporate and politic of the State of New Jersey (the "Authority"), and _____, conducting a practice in Professional Engineering with its principal offices located at _____ (the "Consultant"), is made according to the terms and conditions set forth below.

1. PROFESSIONAL SERVICES TO BE RENDERED

Consultant shall provide professional services required for the titled project as set forth in the Expression of Interest Solicitation dated _____, the Consultant's Expression of Interest dated _____, and Fee proposal dated _____.

2. INSURANCE TO BE PROVIDED BY CONSULTANT AND SUBCONSULTANTS

2. Prior to the commencement of any activity under this Order for Professional Services ("OPS"), the Consultant shall procure and maintain at its own expense, throughout the term of the OPS and until acceptance by the Authority of the Project or for a duration as otherwise provided herein, and, with respect to products and completed operations insurance, for a period of not less than three (3) years following the termination of this OPS, from an insurance carrier acceptable to the Authority, the following insurance coverages:

- A. Consultant shall maintain Commercial General liability insurance (CGL) with a coverage limit of not less than \$2,000,000 each occurrence. CGL insurance shall be written on the latest ISO occurrence form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage) and shall cover liability for bodily injury and property damage arising from premises, operations, independent consultants, products-completed operations and for liability arising from personal injury and advertising injury, and liability assumed under contract. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. The insurance shall be endorsed to delete the coverage restriction related to work conducted within fifty (50) feet of a railroad, and the XCU exclusions. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds on the latest ISO forms providing such status for ongoing operations and products-completed operations without any added restrictions or diminution in coverage (or substitute forms providing at least equivalent coverage). This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. This insurance shall be

endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Consultant would not be covered due to the operation of an insured versus insured exclusion.

- B. Consultant shall maintain Commercial Automobile liability insurance covering all vehicles owned or used by Consultant with a coverage limit of not less than \$2,000,000 each occurrence. Auto insurance shall be written on the latest ISO form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage) and shall cover liability for bodily injury and property damage. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. Such insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Consultant would not be covered due to the operation of an insured versus insured exclusion.

The Consultant and any Subconsultants who will be transporting any hazardous materials, hazardous substances, hazardous wastes and contaminated soils as part of the Work under this OPS, shall provide the Authority with evidence of levels of financial responsibility as required by the Motor Carrier Act of 1980 and 49 C.F.R., Part 387. The Consultant and/or Subconsultant, as the case may be, shall provide the Authority with an Endorsement for Motor Carrier Policies of Insurance for Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90) issued by the insurer.

- C. Consultant shall maintain workers' compensation and employer's liability insurance. Employers' liability coverage shall be with a limit not less than \$1,000,000 Bodily Injury by Disease Each Employee, \$1,000,000 Bodily Injury by Accident- Each Accident, \$1,000,000 Bodily Injury by Disease – Policy Limit. Where permitted by law, such insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of the State of New Jersey and shall include all-states insurance to extend coverage to any state which may be interpreted to have legal jurisdiction. Such policies shall include endorsements to ensure coverage under the U.S. Longshore's and Harborworkers' Compensation Act, and general maritime law, the Jones Act and the Death on the High Seas Act where required.
- D. Consultant shall maintain Architects and Engineering Errors and Omissions insurance with a minimum limit of liability of \$2,000,000 per claim and in the aggregate exclusive of the amount required for Commercial General Liability insurance. The \$2,000,000 limit of liability is to be renewed annually for the duration of the project and for a period of three (3) years following the termination of the OPS. The insurance provided shall include the following terms:
- i. The definition of Professional Services shall include all Professional Services performed by or on behalf of the Consultant; and
 - ii. The policy shall not contain any policy language that would preclude coverage for professional services required within the means and methods of construction; and
 - iii. The policy shall not contain any policy language that would preclude coverage for claims arising from or relating to pollutants, waste, hazardous materials, asbestos, silica or mold.

- E. Consultant shall maintain or cause its subconsultants and/or subcontractors to maintain Contractors Pollution liability (CPL) insurance with a coverage limit of not less than \$2,000,000 each occurrence, \$2,000,000 aggregate.

The CPL insurance shall include, but not be limited to, coverage for on-site cleanup, bodily injury and property damage liability, contractual liability, personal injury liability and automobile liability for the transportation of materials (including hazardous materials and waste) to and from the project site, completed operations and independent consultants. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. If this insurance is maintained by its subconsultants and/or subcontractors, the Consultant shall also be named as an additional insured. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Consultant, its Subconsultants and/or subcontractors would not be covered due to the operation of an insured versus insured exclusion.

Upon selection of a disposal facility (if applicable), the Consultant shall also furnish evidence to the Authority that the disposal facility chosen has the minimum environmental liability insurance required by applicable law.

- F. As respects any watercraft (Boats, Barges, etc.) used during the performance of this OPS, Consultant shall maintain, or cause its subconsultants or subcontractors to maintain Marine Protection and Indemnity Insurance covering all marine hazards arising from this OPS; including injuries to crew members, if not provided through other insurance; Bodily Injury to third parties and Property Damage to wharves, piers and other structures and loss or damage to other vessels whether or not caused by collision. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. The policy shall be subject to a limit of liability of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate. If the policy is subject to an aggregate limit, replacement insurance will be required if it is likely such aggregate will be exceeded. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Consultant or the subconsultant or subcontractor would not be covered due to the operation of an insured versus insured exclusion.
- G. If the Consultant or Subconsultant is engaged in any operations utilizing aircraft, it shall maintain aircraft liability insurance covering bodily injury and property damage liability in an amount not less than \$10,000,000 written on an occurrence basis. This insurance shall also provide coverage for mental anguish or other mental injury arising from bodily injury. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Authority. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Authority against the Consultant would not be covered due to the operation of an insured versus insured exclusion.

- H. If the Consultant or any Subconsultant is engaged in any Work on the Project which requires a permit from a railroad company, the Consultant will provide insurance in such amounts and such limits as required by the individual railroad company. At a minimum, insurance will be at least as broad as that provided by the latest ISO form without any restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage.)
- I. Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the Work shall be provided upon request of the Chief Engineer.
- J. All insurance policies shall specify that the territorial limits shall be on a worldwide basis or as otherwise agreed with the Authority. All insurance policies shall provide that not less than 30 days advance written notice of cancellation or material change of any insurance referred to therein shall be given by registered mail to the General Counsel, New Jersey Turnpike Authority at P.O. Box 5042, Woodbridge, NJ 07095. All insurance companies providing coverage shall be authorized to do business in the State of New Jersey and maintain an A.M. Best rating of A-, VII or better.
- K. Any other insurance carried by Consultant or Subconsultants shall be considered to be primary and any insurance carried by or self-insurance programs afforded to the Authority shall be considered excess and non-contributing with such primary insurance.
- L. Any other insurance carried by Consultant or Subconsultants shall also contain a waiver of subrogation clause in favor of the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers.
- M. Prior to commencing any work under this OPS and thereafter upon the Authority's request, Consultant shall furnish the Authority with a certificate(s) of insurance satisfactory to the Authority and, if requested by the Authority, applicable endorsements and/or a certified duplicate copy of the insurance policy(s) required, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. Such Certificates of Insurance shall identify the coverage to the OPS by reference. The Certificates of Insurance shall state that each of the above-required policies has been amended to include the following endorsements and shall be accompanied by copies of the endorsements:
- i. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds." This statement is not required for the Consultant's workers' compensation and employers liability insurance or builders risk insurance, if required.
 - ii. Thirty (30) days notice of cancellation or material change in coverage shall be given by registered mail to the New Jersey Turnpike Authority as specified above.
 - iii. Where permitted by law, all policies shall contain a waiver of subrogation clause in favor of the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers.
 - iv. With respect to all policies, the other insurance clause under each policy shall be amended to read as follows: "This policy will act as primary insurance and not contribute with policies issued to or self-insurance programs afforded to the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers"

v. All certificate(s) shall be mailed to: Law Department, Attn: Insurance, New Jersey Turnpike Authority, P. O. Box 5042, Woodbridge, New Jersey 07095.

- N. In the event that Consultant subcontracts any portion of its duties under this OPS, Consultant shall require such subconsultant or subcontractor to comply with all of the above insurance requirements as if the subconsultant's or subcontractor's name were substituted for any reference to Consultant. If any subconsultant or subcontractor cannot comply with this requirement, then such subconsultant shall be added under the Consultant's policies as an additional insured.

It is agreed and understood by the parties that the obligation of the Consultant to obtain and maintain insurance policies required in accordance with this OPS is an essential term of the OPS and that the Authority relies on the Consultant to perform such obligation. The parties further acknowledge and agree that the failure of the Authority to require strict compliance with all the terms and conditions regarding insurance, as set forth in this OPS, and as evidenced by any Certificates of Insurance, Slips and/or Binders, copies of insurance policies, or otherwise, shall not constitute a waiver or amendment of any of the terms, conditions and requirements of this OPS regarding the provision of insurance coverage by the Consultant.

The Consultant shall ensure that the activities to be performed under this OPS do not violate the terms and conditions of any insurance policy which is or may be provided by the Consultant hereunder, and that it shall take all measures necessary to avoid any actions which may lead to cancellation or voidance of such insurance policies.

- O. In the event that the Consultant fails or refuses to maintain or renew any insurance policy required to be maintained herein, or if such policy is cancelled or modified so that the insurance does not meet the requirements contained herein, the Authority may refuse to make payment of monies due under this OPS. The Authority in its sole discretion may use such monies to purchase insurance on behalf of the Consultant or Subconsultant. During any period when the required insurance is not in effect, the Chief Engineer may suspend performance of the OPS. If the OPS is so suspended, no additional compensation or extension of time shall be due on account of such suspension. The Authority may waive or modify any insurance requirement set forth herein.

Due to future changes in economic, financial, risk and/or insurance market conditions the Authority at its discretion may modify the above insurance requirements

- P. NOTWITHSTANDING THAT MINIMUM AMOUNTS OF INSURANCE COVERAGE CARRIED OR REQUIRED TO BE CARRIED BY THE CONSULTANT ARE SPECIFIED HEREIN, THE LIABILITY OF THE CONSULTANT SHALL NOT BE LIMITED TO THE AMOUNTS SO SPECIFIED AND SHALL EXTEND TO ANY AND ALL LIABILITY IN EXCESS OF THE INSURANCE COVERAGES SO PROVIDED NOR SHALL THESE MINIMUM LIMITS PRECLUDE THE AUTHORITY FROM TAKING ANY ACTION AVAILABLE TO IT UNDER THE PROVISIONS OF THE OPS OR OTHERWISE IN LAW.
- Q. Terms and Deductibles. The Consultant shall be responsible for any deductible or self-insured retention, exclusions or lack of coverage in the insurance policies described above. Any deductible or self-insured retention greater than \$5,000 per occurrence must be disclosed to and approved by the Authority. The Authority reserves the right to require that any deductible or self-insured retention be no greater than \$5,000 per occurrence.

As per the Law Department, the following EEO language must be used **AS IS – NO CHANGES ARE TO BE MADE:** remove this box before printing OPS Agreement

3. MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE – N.J.S.A. 10:5-31 et seq., P.L. 1975, C. 127) N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation, and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq. as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2, or Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302

The contractor and its subcontractor shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.

4. COMPENSATION FOR SERVICES

Compensation for services by the Consultant shall include direct professional and technical salaries, except Corporate Officers, Partners, Owners and routine secretarial and clerical services, multiplied by _____, plus out-of-pocket expenses and outside specialized services as defined below. The multiplier shall not be applied to the premium portion of overtime. The multiplier covers all overhead and profit. When Corporate Officers, Partners, Owners, and/or Principals are required to provide services in a technical capacity, the salaries for such services shall be reimbursable. No expenses or costs shall be billed unless specifically included in this Order for Professional Services.

This is the standard language:

Direct expenses shall include mileage, at the Authority's prevailing rate. Any change to this rate is subject to approval by the Authority's Chief Engineer. Expenses for lodging and meals will be paid in accordance with the Federal per diem rates which can be found at www.gsa.gov/perdiem. Compensation for lodging and meals must be approved in advanced by the Authority, otherwise the Consultant will not be reimbursed for meals and lodging. This shall also apply to the Consultants subconsultants.

Verify the use of the following language for Structures Section OPS' for Bridge/Tower Inspection – if not applicable remove:

Direct expenses shall include mileage, printing of inspection reports (including the costs of regular paper, colored paper, dividers, covers, photo pages, bindings, labels, and plastic covers), rental costs for bridge/tower inspection equipment, and expenses associated with the unanticipated assignment task, with prior written

approval by the Authority. Mileage will be reimbursed for travel between the field office and the job site and return. Any changes to this rate are subject to the approval by the Authority's Chief Engineer.

Specialized services are those required services performed by other firms at the Consultant's direction. Specialized services in excess of \$5,000 must be approved in advance by the Authority.

Salaries shall be charged at the Consultant's hourly rates, as presented in the Consultant's {revised} _____ Fee Proposal. The Consultant is responsible for managing all personnel resources so that the average salary rates for each classification, as presented in the Fee Proposal, are not exceeded. Individual standard and overtime rates must be approved by the Authority's Chief Engineer or the Chief Engineer's designated representative prior to commencement of work or whenever the Consultant proposes that an individual's rate be changed due to promotions only during the term of this Order for Professional Services. Except for overtime worked on construction supervision during permissible contract working hours, approval of overtime must be issued by the Authority's Chief Engineer.

5. ESTIMATED TOTAL COST OF SERVICES

Authorized amount of \$ _____

Maintenance Reserve/Special Project Reserve/Capital Budget Project No. _____

It is anticipated that costs will not exceed the amount shown above. Any increase of the estimated total cost, without prior Authority approval, shall be at the sole risk of the Consultant. The Consultant shall, at least 60 days prior to the date when costs may exceed the aforementioned sum, request consideration by the Authority through application to the Chief Engineer, in writing, for such increased costs.

If, during any stage of the work a change in scope is ordered by the Authority resulting in additional costs to the Consultant, it shall be the Consultant's responsibility to so notify the Office of the Chief Engineer and request approval of same.

6. PROFESSIONAL STANDARD OF CARE

The Authority's Chief Engineer may disapprove at any time any item of service by the Consultant if such item is not in accordance with the requirements of this Order for Professional Services or the standard of care of the Consultant as set forth in this Section. The Consultant represents and warrants that it shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of its profession performing the kind of services hereunder and practicing in the same or similar locality at the same time. In the event of non-fulfillment of the foregoing warranty, the Consultant shall promptly re-perform at the written request of the Authority made at any time within a one (1) year period after the Authority's acceptance (by use) of the services, such corrective services (within the original scope of the Consultant's services) as may be necessary to conform to the foregoing warranty; provided further however, that the Authority's Chief Engineer shall have the right throughout the course of the entire project to review the Consultant's work and request changes and corrections so that the services of the Consultant conform to the requirements of this Order for Professional Services and standard of care. All costs incurred by the Consultant in performing such corrective services shall be borne by the Consultant.

7. NON-WAIVER

Any payments made to the Consultant by the Authority, under the terms of this Order for Professional Services, shall not be deemed a waiver of the Authority's right to seek damages in the event there are any deficiencies in the services provided hereunder.

8. FEDERAL AND STATE LAWS

The Consultant shall observe and comply with all applicable Federal and State laws and any other applicable laws that apply to the scope of the Consultant's services under this Order for Professional Services.

The Consultant shall comply with all applicable provisions of the Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970, 29 U.S.C. Section 651 et seq., including Safety and Health Regulations for Construction. The Consultant shall maintain up-to-date records of the required information as specified in the Recordkeeping Requirements pamphlet issued by the U.S. Department of Labor, Bureau of Labor Statistics or Occupational Safety and Health Administration. The Consultant shall comply with the applicable provisions and regulations of the New Jersey Worker and Community Right-to-Know Act, N.J.S.A. 34:5A-1 et seq. The Consultant shall maintain the appropriate records and information as specified in such New Jersey Worker and Community Right-to-Know Act and make available to the Authority a copy of these records and information.

9. INDEMNIFICATION

The Consultant agrees to defend, indemnify and save harmless the Authority, its officers, agents and employees and each and every one of them against and from all liabilities, judgments, threatened, pending or completed actions, suits, demands for damages or costs of every kind and description actually and reasonably incurred (including attorneys' fees and costs and court costs) (collectively "Liabilities") including, without implied limitations, Liabilities for damage to property or Liabilities for injury or death of any person (including but not limited to Liabilities for damage to property or Liabilities for injury or death of the officers, agents and employees of either the Consultant or the Authority), resulting from any negligent act or omission or from the willful misconduct of the Consultant or of any of its officers, agents, subconsultants, subcontractors, or employees in any manner related to the subject matter of this Order for Professional Services. Any money due to the Consultant under and by virtue of this Order for Professional Services as shall be considered necessary by the Authority may be retained by the Authority and held until any and all Liabilities shall have been settled and suitable evidence to that effect furnished to the Authority. The obligations in this Section shall survive the termination, expiration or rescission of this Order for Professional Services.

10. REQUIREMENTS FOR PUBLIC LAW 2005, CHAPTER 51 (formerly EO 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Executive Order 134 was signed on September 22, 2004 ("EO 134"). The Order is applicable to all State agencies, the principal departments of the executive branch, any division, board, bureau, office, commission within or created by a principal executive branch department, and any independent State authority, board, commission, instrumentality or agency. Executive Order 134 was superseded by Public Law 2005, c.51, signed into law on March 22, 2005. In September 2008, Executive Order 117 was signed and become effective November 15, 2008. It applies to the same government contracting entities subject to Executive Order 134, but extends the political contribution restrictions by expanding the definition of "business entity" to include, for example, more corporate shareholders and sole proprietors. Executive Orders 134 and 117, and Public Law 2005, c.51 contain restrictions and reporting requirements that will necessitate a thorough review of the provisions. Pursuant to the requirements of PL 2005, c.51, the terms and conditions set forth in this section are material terms of any OPS resulting from this RFEI or RFP:

DEFINITIONS

For the purpose of this section, the following shall be defined as follows:

- a) Contribution – means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.
- b) Business Entity – means any natural or legal person; business corporation (and any officer, person, or business entity that owns or controls 10% or more of the corporation's stock); professional services corporation (and any of its officers or shareholders); limited liability company (and its members); general partnership (and its partners); limited partnership (and its partners); in the case of a sole proprietorship: the proprietor; a business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction, including its principals, officers, or partners. The definition of a business entity also includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity ; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under section 527 of the Internal Revenue Code that is

directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

BREACH OF TERMS OF THE LEGISLATION

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of the Legislation, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

CERTIFICATION AND DISCLOSURE REQUIREMENTS

- a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State, county or municipal political party committee, or legislative leadership committee during specified time periods.
- b) At the time of submission of the Expression or Proposal, the Business Entity shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the means of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.
- c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made.

STATE TREASURER REVIEW

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 51

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 5, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to

determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at <http://www.elec.state.nj.us>

ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 51 (EXECUTIVE ORDER NO. 117)

Governor Jon S. Corzine recently signed Executive Order No. 117, which is designed to enhance New Jersey's efforts to protect the integrity of government contractual decisions and increase the public's confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 ("Chapter 51"), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

Executive Order No. 117 extends the provisions of Chapter 51 in two ways:

1. The definition of "business entity" is revised and expanded so that contributions by the following individuals also are considered contributions attributable to the business entity:
 - Officers of a corporation, any person or business entity who owns or controls 10% or more of the corporation's stock, and professional services corporations, including any officer or shareholder, with the term "officer" being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1), with the exception of officers of non-profit entities;
 - Partners of general partnerships, limited partnerships, and limited liability partnerships and members of limited liability companies (LLCs), with the term "partner" being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1);
 - In the case of a sole proprietorship: the proprietor; and
 - In the case of any other form or entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer, and partner thereof;
 - Spouses, civil union partners, and resident children of officers, partners, LLC members, persons owning or controlling 10% or more of a corporation's stock, all shareholders of a professional services corporation, and sole proprietors are included within the new definition, except for contributions by spouses, civil union partners, or resident children to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides.
2. Reportable contributions (those over \$300.00 in the aggregate) to legislative leadership committees, municipal political party committees, and candidate committees or election funds for Lieutenant Governor are disqualifying contributions in the same manner as reportable contributions to State and county political party committees and candidate committees or election funds for Governor have been disqualifying contributions under Chapter 51.

Executive Order No. 117 applies only to contributions made on or after November 15, 2008, and to contracts executed on or after November 15, 2008.

12. TERMINATION

This Order for Professional Services may be terminated by the Authority as follows:

- (a) immediately, without notice, in the event that the Authority determines, in its sole discretion, that the Consultant has violated any provision of Sections 2, 6, 8 or 10 hereof;
- (b) after thirty (30) days' prior written notice by the Authority, upon failure by the Consultant to remedy breach of any other provision of this Order for Professional Services; or
- (c) for convenience, in the Authority's sole discretion, after thirty (30) days' prior written notice by the Authority.

13. RIGHT TO AUDIT

In connection with the professional services provided by the Consultant under this Order for Professional Services, the Consultant shall:

- (a) Maintain, in accordance with accepted accounting Practice, during the effective period of this Order for Professional Services and for one (1) year after the expiration or earlier rescission or termination thereof, and for such further period extending until the Consultant shall receive written permission from the Authority to do otherwise, records and books of account recording all transactions of the Consultant at, through, or otherwise connected with the terms and conditions as set forth in this Order for Professional Services, which records and books of accounts shall be kept at all times within the State of New Jersey;
- (b) Permit in ordinary business hours during the effective period of this Order for Professional Services for one year thereafter, and during such further period as is mentioned in the preceding subsection (a), the examination and audit by the officers, employees and representatives of the Authority of such records and books of account and also any records and books of account of any company which is owned or controlled by the Consultant, or which owns or controls the Consultant, if said company performs services, similar to those performed by the Consultant anywhere in the State of New Jersey;
- (c) Permit in ordinary business hours the inspection by the officers, employees and representatives of the Authority of any equipment used by the Consultant in connection with the terms of this Order for Professional Services.
- (d) If such audit as mentioned in the preceding subsection (b) requires the Authority's officers, employees and representatives to travel outside the State of New Jersey to the permittee's principal place of business where the Consultant's records and books of account are maintained then the Consultant shall bear the additional cost of the audit.

14. OFFICE OF STATE COMPTROLLER RIGHT TO AUDIT

Pursuant to N.J.S.A. 52:15C-14(d), relevant records of private vendors or other persons entering into contracts with the Authority are subject to audit or review by the New Jersey Office of the State Comptroller. Therefore, the Consultant shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

15. GOVERNING LAW

This Order for Professional Services shall be governed by and construed under the laws of the State of New Jersey. Any action brought by either party involving any dispute related to this Order for Professional Services shall be instituted in the Superior Court of New Jersey.

16. PERSONAL LIABILITY

In carrying out the provisions of this Order for Professional Services, or in exercising any power or authority granted it by the provisions of this Order for Professional Services, neither the Members of the Authority, nor any officer, agent or employee of the Authority shall be personally charged by the Consultant with any liability.

17. PROFESSIONAL SERVICES AGREEMENT

This Order for Professional Services between the parties is an agreement for professional services within the meaning of the statutes and laws of the State of New Jersey and, in particular, N.J.S.A. 27:23-6.1.

18. ASSIGNMENT

The Consultant shall not assign this Order for Professional Services, or any part thereof, without the prior written permission of the Authority. Any attempted assignment without such prior consent shall be null and void.

If [SIMPLE OPS](#) use this language:

19. INTEGRATION

The body of this Order for Professional Services together with the Expression of Interest Solicitation, dated _____ Consultant's Expression of Interest, dated _____, and {revised} Fee Proposal, dated _____, represent the complete understanding and agreement of the parties, and supersedes all prior and contemporaneous agreements between the parties on the subject matter herein. Any modification or amendment to this Order for Professional Services shall be in writing and signed by both parties. Should any conflict in interpretation of the terms and conditions arise between the Expression of Interest Solicitation and the Consultant's Expression of Interest, the Expression of Interest Solicitation shall control.

If [COMPLEX OPS](#) use this language:

The body of this Order for Professional Services together with the Request for Proposal, dated _____ and the Consultant's Technical and {revised} Fee Proposal, dated _____, represent the complete understanding and agreement of the parties, and supersedes all prior and contemporaneous agreements between the parties on the subject matter herein. Any modification or amendment to this Order for Professional Services shall be in writing and signed by both parties. Should any conflict in interpretation of

the terms and conditions arise between the Request for Proposal and the Consultant's Technical Proposal, the Request for Proposal shall control.

20. PARTIES BOUND

This Order for Professional Services shall be binding upon the Authority and the Consultant, their respective successors and assigns.

21. SEVERABILITY

The provisions of this Order for Professional Services are intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Order for Professional Services.

22. SECTION HEADINGS

The section headings provided within this Order for Professional Services are for reference only and not intended to be relied upon for construction or interpretation of the Order for Professional Services.

[If On Call OPS use this language:](#)

23. TERM

This Order for Professional Services shall have an initial term of _____ () year(s) commencing on the Effective Date and terminating on _____, 20____ (the "Initial Term"). The Authority may, in its sole discretion, extend this Order for Professional Services beyond the Initial Term for _____ () additional _____-year extension(s) (the "Extension" or "Extensions") on the original terms and conditions of the Order for Professional Services. Further, the Authority shall have the right to assign any services under this Order for Professional Services, the completion of which may extend beyond the Initial Term or any of the Extensions (the "Hold-Over Assignment"), under the following conditions: (1) the Hold-Over Assignment is dated and delivered to the Consultant before the expiration date of the Initial Term or the Extension, as the case may be; (2) the Hold-Over Assignment is completed no later than **[six (6) months?]** **[One (1) year?]** beyond the Initial Term or Extension (the "Hold-Over Completion Date"); (3) the Consultant agrees to complete the Hold-Over Assignment under the original terms and conditions of this Order for Professional Services, save for the Hold-Over Completion Date; and (4) unless additional funding, pre-approved by the Authority's Board of Commissioners has been secured, no Hold-Over Assignment shall exceed the original funding established for this Order for Professional Services.

The parties executing this agreement represent and warrant, upon which representation and warranty the other party is materially relying, that they have all rights, power, and authority to enter into this agreement and bind their respective entity.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Order for Professional Services and to affix their respective corporate seals on the day and year first above written.

ATTEST:

NEW JERSEY TURNPIKE AUTHORITY

Sheri Ann Czajkowski
Secretary to the Authority

By_____
Joseph W. Mrozek
Executive Director

[Corporate Seal]

Approved:

Bruce A. Harris
General Counsel

Date:_____

ATTEST:

[Name of Company]

Notary Public
[Corporate Seal]

By_____
[Name]
[Title]